

The complaint

Mr J complains about St. James's Place Wealth Management Plc's advice, charges and service in relation to four investment bonds, two of which were held in the P Trust, of which he is a trustee.

What happened

In 2018 Mr J's mother, Mrs P, was introduced to a St. James's Place Wealth Management Plc ("SJP") adviser. In January 2019 Mrs P was advised to invest around £555,000 between two bonds in discounted gift trusts and a further £345,000 in two bonds in loan trusts, to provide her with an income and to help with inheritance tax mitigation. In February 2022 Mrs P surrendered the bonds in the loan trusts and appointed Mr J a trustee of the discounted gift trusts. I'll collectively refer to the two bonds in the discounted gift trusts as the P Trust. Around July 2022, Mrs P ended her relationship with SJP and withdrew from the investments. She made several complaints between May and October 2022 including:

- A lack of receipt of documents from her adviser.
- That she had paid early withdrawal charges ("EWC") when taking withdrawals from the bonds held in loan trusts, and that she would have to pay EWC on withdrawing from the bonds in the P Trust in future.
- She had asked that the ongoing advice charge deducted from all her products be stopped but hadn't received any confirmation of that.
- There were delays to the withdrawal from the bonds held in the P Trust.
- She was unhappy SJP had arranged safeguarding visits to her home.
- She felt the initial advice to invest was unsuitable, in part due to discrepancies in the paperwork and dates of cheques compared to payment receipts.
- She was unhappy with the recommendation by SJP to add a third-party trustee to each trust, who Mrs P didn't know very well.
- She was concerned over the income paid from the bonds in the P Trust. She had started receiving it after the first 12 months the bonds were in place, and she had become concerned that it had been paid to someone else prior to that.

In the main, SJP didn't uphold the complaint, though I understand that an offer of interest was made of around £1,360 to Mrs P, plus £500 in compensation. Mrs P referred the complaint to our service in November 2022, with the help of Mr J. Sadly Mrs P then passed away.

An investigator at our service considered the complaint and found that there were parts of it that we couldn't investigate. Of the parts we could investigate, he found that SJP hadn't done anything wrong. In summary he said:

- We didn't have proof that Mr J had been appointed in law to act as Mrs P's executor, as we hadn't been provided with a grant of probate. Mrs P's executor(s) would be eligible to complain about the advice she was given to invest, and the service provided to her personally by SJP throughout. So, the investigator found we couldn't look into those complaint points or anything to do with the loan trusts.

- In his role as Trustee, Mr J was eligible to complain about the administration of the products held in the P Trust. So, the investigator found we could consider the complaint points about the income paid in the first 12 months of the bonds, and the EWCs that applied to the bonds held in the P Trust.
- The investigator found that no income had been paid in the first 12 months from the bonds in the P Trust. He also found that the EWCs had been applied in line with the terms, so he didn't uphold the complaint.

Mr J remained unhappy and in summary he said:

- He did not consent to our service only providing a partial opinion on SJP's actions, and without the ability to consider all of SJP's actions in the round, a fair decision could not reasonably be reached.
- He said that he had a complaint in his own right as trustee about the poor service provided after February 2022 when he was appointed, so it wasn't simply about the service Mrs P received in her personal capacity. He explained this was in relation to his request for the documentation from 2018 and 2019, which he felt SJP intentionally delayed sending to him.
- Mr J said the obfuscation of that evidence was proof that SJP acted dishonestly toward him and Mrs P as trustees and that it was intentional to hide evidence of their negligent behaviour. He alleges that the delays in 2022 must have been because the documents were not drawn up in 2018 or 2019 and so SJP was having to write them in 2022. He said that under the rules, the documents had to be provided to Mrs P at the time of the advice, and the delay in sending them proves they weren't provided to her, which was a breach of the rules. Mr J and Mrs P, having suspected this breach of rules, didn't want to keep the investments with SJP any longer.
- Mr J said that having experienced SJP's attempts to "*prevaricate, dissemble, try to conceal the information, and provide inconsistent information to the trustees, without providing explanations or apologies*" that it was reasonable for them to want to surrender the investments and leave SJP. He says SJP shouldn't be allowed to apply the EWC, as a penalty in those circumstances is unreasonable and unethical.

He asked that an ombudsman consider his complaint, so it's been passed to me for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I agree with the outcome reached by the investigator, for largely the same reasons. Before I go into my findings, I want to reassure Mr J that I've carefully considered all his submissions to our service. However, I may not mention every point made or discuss them in as much detail as the parties have to date, as reflected in the above summary of the situation. I do not mean any offence by that – it's simply that my role is to provide a decision on the matters at the heart of Mr J's complaint in an efficient and informal manner.

My decision serves two purposes, firstly to establish which parts of the complaint our service has jurisdiction to consider, and secondly to set out my findings on the merits of the parts of Mr J's complaint we have jurisdiction over.

Our jurisdiction

We can't consider all the complaints we receive and the rules governing this are set out by the Financial Conduct Authority in the Dispute Resolution ("DISP") section of their Handbook. These rules set out which complaints are in our jurisdiction, based on several factors, and each must be satisfied for our service to have jurisdiction. The factor relevant to these circumstances is set out at DISP 2.7 and says a complaint may only be dealt with by our service if it is brought by, or on behalf of, an eligible complainant.

There is a two-part test to decide if a complainant is eligible, the first part of which is set out at DISP 2.7.3. The relevant part of this rule says that to be eligible, the complainant must be a certain type of person from a list, which includes a consumer and a trustee. Mr J is the latter in relation to two of the bonds being complained about. Mrs P, when she received advice was a consumer and during her relationship with SJP over the years that followed, she was acting as both a consumer and trustee.

The second part of the test is set out at DISP 2.7.6 – it says:

"To be an eligible complainant a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent:

- (1) the complainant is (or was) a customer, payment service user or electronic money holder of the respondent;*
- (2) the complainant is (or was) a potential customer, payment service user or electronic money holder of the respondent"*

Though the list is longer than those two options, I'm satisfied that those are the only two relationships from the list that might apply to this situation. It's this second part of the test - the relevant relationship with SJP **out of which the complaint arises** (my emphasis) - that is key to the complaint.

The word 'customer' is not defined in the rules and so it has its natural meaning. In general, based on the dictionary definition, I consider this to include being a person to whom goods and/or services are directed toward or provided to. Mrs P was a customer of SJP in the following ways:

- From 2018 when she started to receive advice from them, in her individual capacity as a consumer.
- As recipient of the income from the bonds, she was their customer again in the capacity as a consumer - as the settlor of the bonds she was entitled to the income.
- In relation to the ongoing service received from the adviser after the initial advice, she was a customer in her capacity as a consumer and as a trustee of all four bonds.
- In relation to the surrender of the investments held in the loan trusts in 2022, she was a customer in her capacity as a trustee, but also in her capacity as a consumer. This is because the majority of the amount withdrawn was returned to her as repayment of the loan, and the rest as trustee it was her role to ensure it was distributed according to the trusts.
- In relation to the surrender of the investments held in the discounted gift trusts and any delays that occurred, Mrs P was a customer in her capacity as settlor (consumer) as the recipient of the settlor's fund that was returned.

Although Mrs P would have been eligible to complain about the above and did bring the complaint to our service, as she has since passed away, I must consider whether we are able to consider her complaint. DISP 2.7.2 says:

“A complaint may be brought on behalf of an eligible complainant (or a deceased person who would have been an eligible complainant) by a person authorised by the eligible complainant or authorised by law. It is immaterial whether the person authorised to act on behalf of an eligible complainant is himself an eligible complainant.”

I can see that when Mrs P first brought her complaint to our service, she had authorised Mr J to represent her in the complaint. When she passed away, that authorisation came to an end. Due to the size of her estate, official confirmation of her executors is required to show who is “authorised by law” to represent Mrs P’s interests, as per the above rule. Generally, in these circumstances, a grant of probate is the necessary document to show authorisation.

Mr J has not been able to provide a copy of the grant of probate, though he has provided a copy of Mrs P’s will from 2006, which appointed Mr J and his sister as executors. The will alone isn’t enough – without the grant of probate to confirm it, I can’t be sure who is authorised by law to represent Mrs P. This is because Mrs P’s circumstances may have changed in the interim. Even if we had the grant of probate, as we’ve explained to Mr J previously, we’d also need his sister and any other executors to join the complaint.

Due to the above, we cannot consider any complaint points that arise from Mrs P’s relationship with SJP.

Mr J, as trustee of the P Trust, was a customer in relation to the service given to him from February 2022 onwards. Primarily this is in relation to the surrender of the two bonds and their value at that time – so I can consider the value of the bonds at surrender, which includes considering the withdrawals taken over the life of the bonds in the P Trust. I can also consider the EWC applied – but not to the full extent Mr J has asked us to consider.

This is because the reasons Mr J has asked for the EWC to be waived are based on his allegations about SJP’s actions towards Mrs P. I can see that he feels strongly that SJP’s actions in 2022 when he requested the paperwork relating to the sale of the products, is proof to support his allegation that SJP had breached various rules from the FCA’s Handbook in the course of giving advice to Mrs P.

In my view, his complaint about the delays in providing him with those documents arises from the advice SJP originally gave and Mrs P was the customer in relation to the sale, not Mr J. The rule specifies that to be eligible, in these circumstances, the person bringing the complaint to our service, needs to be the customer of the business in relation to the event being complained of. As already established, I cannot look at the events that took place at the sale in 2018 and 2019 as Mr J isn’t eligible to complain as he was not SJP’s customer.

For the above reasons, I’m satisfied Mr J’s complaint about the provision of information in 2022 arises from events relating to the relationship Mrs P had with the adviser, as she was their customer at the time of the sale. Mr J’s primary reasons for thinking the EWC ought to be waived stem from allegations relating to the advice given to Mrs P. As I can’t make an award that is linked to SJP’s actions in relation to Mrs P, it follows that I can’t make the finding that the EWC should be waived because of something that SJP did or didn’t do in 2018 and 2019. That would be outside of my jurisdictional remit.

In my view, the only part of the EWC complaint that I can consider is whether it was applied in line with the terms that govern the bonds, as this is the complaint that Mr J, in his capacity as trustee, is eligible for. I appreciate Mr J will be very disappointed that I can’t consider his arguments, but I simply can’t provide an opinion on actions that I have no jurisdiction over.

My findings on the merits of Mr J’s complaint

Due to the above, I can only look at a very narrow part of the complaint. Having done so, I've reached the same conclusion as this investigator.

With regards to the EWC applied, I appreciate that Mr J is concerned because he feels SJP didn't reveal the EWC to Mrs P in 2019 and their actions towards her generally mean it ought to be waived. But as set out above I'm limited to only looking at whether it was applied in line with the terms of the products. Having considered that, I'm satisfied that according to the paperwork governing the bonds, the EWC applies if full surrender takes place within the first six years of the bonds being in place.

This is on a sliding scale and in the first year it was 6% and decreased by 1% each year. The surrender took place in August 2022, during the fourth year the bonds were in place, at which point the EWC would have been 3% according to the paperwork. The bonds were surrendered on 8 August 2022 and were worth £531,619.88 together at that time. The total EWC deducted was £14,338, which is around 2.7% of their value, leaving £517,281.88 to be paid out to Mrs P on 24 August 2022. As the amount deducted for the EWC was no more than the amount set out in the paperwork, I find it was reasonably applied.

Turning now to the value of the bonds. Mrs P originally invested £555,372.40. There's no evidence that any withdrawals took place in the first 12 months after they were set up. In total the withdrawals paid to Mrs P from the bonds in the P Trust was £1,851.22 per month, for 20 months, totalling £37,024.40. Adding that to the surrender amount Mrs P received, a total of £554,306.28 was paid out from the bonds, a loss of £1,066.12 from the amount originally invested. I've seen no evidence that suggests this was an incorrect amount.

So, based on everything I've seen and in relation to the narrow part of the complaint that I can comment on, I'm not persuaded that SJP has acted unfairly or unreasonably.

My final decision

For the reasons set out above, I don't uphold Mr J's complaint about the issues I can consider.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J as trustee of the P Trust to accept or reject my decision before 24 September 2025.

Katie Haywood
Ombudsman